

# IOWA DEPARTMENT OF NATURAL RESOURCES

## ADMINISTRATIVE CONSENT ORDER

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**IN THE MATTER OF:**

**LARRELL DEJONG  
JODI DEJONG**

**OSCEOLA COUNTY, IOWA  
ID # 60281 & 60282**

**ADMINISTRATIVE CONSENT  
ORDER**

**NO. 2014-AFO- 12**

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**TO: Larrell DeJong  
Jodi DeJong  
25501 Willow Lane  
New Prague, MN 56071**

### **I. SUMMARY**

This Administrative Consent Order (Order) is entered into between Larrell and Jodi DeJong, and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations of Iowa's requirements pertaining to animal feeding operations. In the interest of avoiding litigation, the parties have agreed to the provisions set forth below.

Any questions or response regarding this Order should be directed to:

**Relating to technical requirements:**

Cindy Martens  
IDNR Field Office #3  
1900 North Grand Ave., Suite E17  
Spencer, IA 51301  
Ph: (712) 262-4177  
Fax: (712) 262-2901

**Relating to legal requirements:**

Randy Clark, Attorney II  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: (515) 281-8891

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Attn: Randy Clark

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**II. JURISDICTION**

This Order is issued pursuant to Iowa Code §455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code §455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Larrell and Jodi DeJong (hereinafter, DeJong) own a swine confinement operation (Allison Site) located in the NW¼ of the NW¼ of Section 35, T99N, R39W (Allison Township), Osceola County, Iowa. The operation has a capacity for 2,000 nursery pigs, utilizes two confinement buildings and manure is stored in an unformed manure storage structure.

DeJong also owns a swine confinement operation (Harrison Site) located in the SW¼ of the SE¼ of Section 10, T98N, R39W (Harrison Township), Osceola County, Iowa. The operation has a capacity for 1,200 nursery pigs, utilizes one confinement building and two confinement trailers, and manure is stored in an unformed manure storage structure.

2. On July 11, 2012, Department Field Office #3 (FO3) staff conducted an inspection of the Allison Site. According to Department inspections dating back to 1999, the operation always had capacity for 700 nursery pigs, but during this inspection the manager stated the operation housed 2,000 nursery pigs. The northernmost building was being refurbished to raise hogs and a walkway was being constructed between this building and the other one. During a telephone conversation with FO3 staff on September 17, 2012, Larrell DeJong stated that 1,500 pigs are housed at the Allison site.

3. On August 20, 2012, FO3 staff conducted an inspection of the Harrison Site. According to Department records dating back to 1999, the operation always had capacity for 700 nursery pigs, but during this inspection the manager stated the operation could house 1,200 nursery pigs: 900 head in the confinement building and 300 head in 2 newly installed trailers. Underground piping to convey manure from the trailers to the unformed manure storage structure had recently been installed. During a telephone conversation with FO3 staff on September 17, 2012, Larrell DeJong stated that 800 pigs are housed at the Harrison site.

4. By letter dated September 18, 2012, FO3 summarized its July 11, 2012 and August 20, 2012 inspections and informed DeJong that expanding these operations that utilize unformed manure storage structures without first obtaining a construction permit violated Iowa law. DeJong was directed to seek as-built approval from the Department and was advised that the matter would be referred to the Department's Legal Services Bureau for enforcement action, including a penalty. In subsequent telephone conversations with Department staff Mr. DeJong also stated that the Morton building at the Allison Site had been moved from a neighboring

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operation and placed over an existing pit at the Allison Site that is not connected to the unformed manure storage structure.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code §459.103 requires the Environmental Protection Commission (Commission) to adopt rules related to animal feeding operations. The Commission has done so at 567 IAC Chapter 65.

2. 567 IAC 65.7(1)"b"(1) and (3) require a confinement feeding operation to obtain a construction permit prior to: constructing, installing or modifying a confinement building that uses an unformed manure storage structure; initiating a change that would result in an increase in the volume of manure or a modification in the manner in which manure is stored in any unformed manure storage structure, even if no construction or physical alteration is necessary. The foregoing facts document that these provisions were violated.

**V. ORDER**

THEREFORE, the Department hereby orders and DeJong consents to do the following:

1. Immediately and hereafter, comply with all construction permit requirements as specified in 567 IAC Chapter 65.

2. Within 90 days of receipt of this Order, submit a construction permit application (see <http://www.iowadnr.gov/portals/idnr/uploads/forms/5421428.pdf?amp;tabid=1451>) and as-built plans and specifications for the Harrison Site, including buildings, manure storage structures, piping and related appurtenances. The construction permit application must include all information specified in 567 IAC 65.9(1) (see Attachment 1) and all information set forth in Attachment 2. You are required to follow all construction permit application procedures required by 567 IAC 65.10(1)(see attachment 3). Thereafter, submit additional information necessary for Department review of the plans and specifications, and implement any modifications in your manure disposal system, as directed by the Department.

3. Pay an administrative penalty of \$2,250.00. The penalty shall be paid to the Department within 30 days of the date the Director signs this Order.

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**VI. PENALTY**

1. Iowa Code §§455B.191 and 459.603 authorize the assessment of civil penalties of up to \$5,000.00 per day for each violation of water quality laws.

2. Iowa Code §455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; 567 IAC Chapter 10. Pursuant to these provisions the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty. The administrative penalty is determined as follows:

a. Economic Benefit. DeJong avoided or delayed the cost of preparing permit applications, including hiring an engineer or groundwater professional to submit information regarding the unformed manure storage structures, necessary to obtain permits. Further, DeJong enjoyed the financial gain of proceeding with expansion without waiting for Department approval. These savings and gains are estimated at \$750.00 and that amount is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time as the most equitable and efficient means of resolving the matter. A permit is required to be obtained prior to construction or modification to allow for review of plans and specifications pertaining to a proposed modification. The purpose of this review is to determine if the facility will meet all applicable requirements. This review insures that the interests of the citizens of Iowa in clean water are protected. Construction prior to obtaining required permits or contrary to permits also threatens the integrity of the animal feeding operation program. Therefore, \$1,000.00 is assessed for this factor.

c. Culpability. Raising swine in Iowa includes the obligation to remain abreast of regulatory requirements. At a minimum, DeJong should have requested guidance from the Department before expanding these operations. Therefore, \$500.00 is assessed for this factor.


**VII. WAIVER OF APPEAL RIGHTS**

This Order is entered into knowingly by and with the consent of DeJong. By signature to this Order, all rights to appeal this Order or any part thereof are waived by DeJong.


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VIII. NONCOMPLIANCE

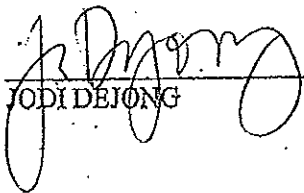
Compliance with section V. ORDER of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code §455B.191.

  
Bruce Trautman for Chuck Gipp  
CHUCK GIPP, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 20 day of  
May, ~~2013~~ 2014

  
LARRELL DEJONG

Dated this 3rd day of  
April, ~~2013~~ 2014

  
JODI DEJONG

Dated this 30th day of  
April, ~~2013~~ 2014

Field Office 3; Randy Clark; Cindy Martens; EPA; VIII. A.1